IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

VERNITA A. HENSON, a single woman, Plaintiff/Appellant, v. TUCSON UNIFIED SCHOOL DISTRICT, a political subdivision of the State of Arizona; STEVEN BOTKIN and LAURA BOTKIN, husband and wife; CRAIG WHALEY and JANET MUNRO, husband and wife; ROBERT VIELLEDENT and JANE DOE VIELLEDENT, husband and wife; THOMAS PATRICK and JANE DOE PATRICK, husband and wife; SHEILA BAIZE and JOHN DOE BAIZE, wife and husband; JANE BUTLER and JOHN DOE BUTLER, wife and husband; LARRY WILLIAMS and JANE DOE WILLIAMS, husband and wife; STEWART SMITH and JANE DOE SMITH, husband and wife; PATRICE HALL and JOHN DOE HALL, wife and husband; ESTANISLADO PAZ and JANE DOE PAZ, husband and wife; ADELITA GRIJALVA, a single woman; BRUCE BURKE and JANE DOE BURKE, husband and wife; MARY BELLE McCORKLE and JOHN DOE McCORKLE, wife and husband; JOEL T. IRELAND and JANE DOE IRELAND, husband and wife; CAROLYN KEMMERIES and JOHN DOE KEMMERIES, wife and husband; ROSALIE LOPEZ and JOHN DOE LOPEZ, wife and husband; JUDY	2 CA-CV 2005-0082 DEPARTMENT A <u>MEMORANDUM DECISION</u> Not for Publication Rule 28, Rules of Civil Appellate Procedure

BURNS and JOHN DOE BURNS, wife and husband; TERRY McCARTHY and JANE DOE McCARTHY, husband and wife; CHARLES SCHOLL and JANE DOE SCHOLL, husband and wife; ROLAND JOHNSON and JANE DOE JOHNSON, husband and wife; BRAD LICTHY and JANE DOE LICTHY, husband and wife; CITY OF TUCSON, a political subdivision of the State of Arizona; CITY OF TUCSON POLICE DEPARTMENT, an administrative department of the City of Tucson,

Defendants/Appellees.

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C2004-0631

Honorable Leslie B. Miller, Judge

AFFIRMED

Vernita A. Henson — Tucson
In Propria Persona

Miniat Wilson, P.C.
By Jerald R. Wilson — Tucson
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P E L A N D E R, Chief Judge.

¶1 In this action involving claims under 42 U.S.C. § 1983, plaintiff/appellant Vernita Henson appeals from the trial court's grant of summary judgment in favor of defendants Tucson Unified School District (TUSD), the City of Tucson, the Tucson Police Department (TPD), and various city employees (collectively, "defendants"). Henson maintains the trial court "misinterpret[ed the] facts" on which her complaint was based and "based its decision in dismissing [her] Civil Rights Violation" claim on the assumption that "this is a suit from the denial of access to attend scholastic activities." Henson asserts her action instead "is base[d] on the premise [she] was denied due process and equal protection of the law prior to arrest" and, on that basis, summary judgment in favor of defendants was inappropriate. We disagree and, therefore, affirm.

BACKGROUND

¶2 On appeal from a summary judgment, we view the facts and all reasonable inferences therefrom "in the light most favorable to the party against whom judgment was entered." *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 2, 965 P.2d 47, 49 (App. 1998). Henson's daughter was a member of the Sahauro High School girls' varsity basketball team until she left the team in January 2003. In November 2002, Henson caused some disturbances at the team's practices, and the school's assistant principal, Craig Whaley, informed her in writing that she was not allowed to attend practices. The note also stated that she was "permitted to attend games involving Sahuaro High School," but that "any

actions [she might take] that are viewed by [the] . . . [s]chool as harassing, intimidating, or threatening [to the] Coach . . . will result in a directive that [she was] not to attend games."

¶3 After receiving the written notice, Henson went to watch a practice and refused to leave when asked. A police officer removed her from the school, and she was cited and ultimately convicted of trespassing. Henson, however, continued to attend games, cheering for the opposing team. During a game in Sierra Vista, Henson sat with Jerrilyn Betts, a parent of a player on the school's junior varsity team. After the game, other parents complained about Henson's and Betts's behavior and the fact that Betts's daughter had made "a slashing gesture across her throat to the members of the girls varsity team." The girl was suspended from the junior varsity team, and when Betts went to the school to complain, an altercation nearly broke out with several other parents. As a result, the school's administration decided to "deny admission to [Henson] and Betts to the last girls varsity basketball game" of the year.

¶4 The administration apparently attempted to have the letter informing Henson that she was not to attend any more games "personally delivered," but Henson denied having received it. When she arrived at the game, Whaley told her she "could not go inside." Henson refused to leave, and she was arrested for trespassing and removed from the school by police. Henson was acquitted of this second trespassing charge.

¶5 Thereafter, Henson filed this action alleging various state law claims as well as a federal law claim based on "[v]iolation of 42 U.S.C. § 1983." On defendants' motions,

the trial court dismissed most of the state law claims. Thereafter, the trial court granted summary judgment in favor of defendants on the remaining claims, including Henson's § 1983 claims. This appeal followed. Henson concedes she "is not appealing the dismissal of th[e] state claims" and makes no argument as to the grant of summary judgment on any state law civil rights claim that might have survived defendants' motions to dismiss. *See* Ariz. R. Civ. App. P. 13(a)(6), 17B A.R.S. Therefore, we address only her § 1983 claim in this appeal.

DISCUSSION

¶6 Henson essentially argues the trial court erred in granting summary judgment in defendants' favor on her § 1983 claim because "the school employee/administration acting under the color of law, had no jurisdiction or authority to ask police to arrest [her]." And, she maintains, the police officer who arrested her "failed to conduct at least a minimal investigation to determine if in fact probable cause existed before placing [her] under arrest." "On appeal from a summary judgment, we must determine *de novo* whether there are any genuine issues of material fact and whether the trial court erred in applying the law." *Bothell*, 192 Ariz. 313, ¶ 8, 965 P.2d at 50.

¶7 "To state a claim for relief in an action brought under § 1983, [claimants] must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50, 119 S. Ct. 977, 985 (1999). Thus, "[t]he first

inquiry in any § 1983 suit . . . is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws.'" *Baker v. McCollan*, 443 U.S. 137, 140, 99 S. Ct. 2689, 2692 (1979), *quoting* 42 U.S.C. § 1983. On that point, we agree with an Ohio court that, "[a]lthough the education and upbringing of one's children is a recognized liberty interest under the Constitution, this does not create a constitutional right for a parent to attend school activities or be present on school property." *Nichols v. W. Local Bd. of Educ.*, 805 N.E.2d 206, 211 (Ohio Ct. Com. Pl. 2003); *see also Ryans v. Gresham*, 6 F. Supp. 2d 595, 601 (E.D. Tex. 1998) ("An exhaustive review of the case law pertaining to the constitutional right of parents to direct the education of their children discloses no holding even remotely suggesting that this guarantee includes a right to access to the classes in which one's child participates."). Therefore, "school authorities have the right to exclude them from school activities and property without a due process hearing." *Nichols*, 805 N.E.2d at 212.

¶8 Indeed, Division One of this court has ruled that, except "[u]nder certain limited circumstances," a student's "participation in a single year of high school athletic competition [does not] rise[] to the level of a constitutionally protectable property interest." *Tiffany v. Ariz. Interscholastic Ass'n, Inc.*, 151 Ariz. 134, 137, 726 P.2d 231, 234 (App. 1986). Any such interest, the court stated, might arise only if the student were "'[t]otal[ly] exclud[ed]'" from "'extracurricular activities for a lengthy period of time.'" *Id.* at 138, 726 P.2d at 235, *quoting Pegram v. Nelson*, 469 F. Supp. 1134, 1140 (M.D.N.C. 1979). Because even a student participant has an extremely limited right to "the safeguards of the

due process clause," we see no reason to extend those safeguards to a parent who merely wishes to attend a student's game. *Id.* at 139, 726 P.2d at 236. Thus, to the extent Henson's § 1983 claim is intertwined with or based on TUSD's decision to ban her from further games, the claim fails.

¶9 Henson also alleges that she "was denied due process and equal protection of the law prior to arrest" because "there was no hearing conducted" and, therefore, she could not seek review of the school's decision to exclude her under the Arizona Administrative Review Act, A.R.S. §§ 12-901 through 12-914. But, even assuming that the action taken to ban Henson rose to the level of a school board decision, the Administrative Review Act does not apply to decisions by local school boards because they are "political subdivisions," expressly excluded by the act. § 12-901(1); *R.L. Augustine Constr. Co. v. Peoria Unified Sch. Dist. No. 11*, 188 Ariz. 368, 371, 936 P.2d 554, 557 (1997). Further, to the extent Henson argues the school administrators failed to follow the school's own policies,[1] and thereby violated basic principles of administrative law, "[a]n administrative agency's failure to follow its own rules and regulations does not create a constitutional due process right on behalf of a party who suffers some wrong at the hands of the administrative body." *Tiffany*, 151 Ariz. at 139, 726 P.2d at 236.

[1]As TUSD points out, however, "Board Policy #1350," on which Henson apparently relies, does not require the school to provide "written notification to a person that they are not allowed [to] be on a school premises [or] that the person would be entitled to a hearing on that issue."

¶10 Henson further contends Whaley "had no jurisdiction or authority to ask police to arrest [her]" because nobody cited to her any school "Board Policy" or statute and because the school had not obtained a restraining order against her. But, unlike the situation in *Nunez v. Superior Court*, 18 Ariz. App. 462, 503 P.2d 420 (1972), on which Henson relies, the question here is not whether Henson committed the crime of "interference with or disruption of an educational institution," A.R.S. § 13-2911, but whether the school "depriv[ed Henson] of any rights, privileges, or immunities secured by the Constitution and laws" in violation of § 1983. As discussed above, the school did not deprive Henson of such rights.

¶11 Henson also alleges TPD "*denied* [her] *due process and equal protection of the law*" because its officer "*failed to conduct at least a minimal investigation to determine if in fact probable cause existed*" and "*did not have probable* cause to arrest [her]."[2] "[A]n arrest without probable cause is a constitutional violation actionable under § 1983." *Patzig v. O'Neil*, 577 F.2d 841, 848 (3d Cir. 1978).

¶12 "A police officer has probable cause when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense." *State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08

[2]Section 13-3883(A)(4), A.R.S., provides that an officer may make an arrest without a warrant "if he [or she] has probable cause to believe . . . [a] misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense." Thus, as Henson correctly argues, in the absence of a warrant, Arizona law required the officer to have probable cause before arresting her.

(2000); *see also Russo v. United States*, 391 F.2d 1004, 1006 (9th Cir. 1968). Henson was arrested for trespassing when she refused to leave the school after being excluded from the last game. Section 13-1502, A.R.S., defines trespassing as "[k]nowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property." Henson does not dispute that Whaley was a "person having lawful control over" the school property, nor does she dispute that she remained at the school after he requested her to leave. And, when a police officer was called to the scene, Whaley asked him to "remove[] [Henson] from the premises" and "arrest her."[3] Thus, because the officer knew Whaley had asked Henson to leave and she had refused, he had "reasonably trustworthy information and circumstance" and thus, probable cause, to arrest her for trespassing. *Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d at 1007.

¶13 That Henson was later acquitted of the trespassing charge does not change this result. "[P]olice officers are not required to conduct a trial before making an arrest," and "[a] subsequent dismissal of the charges does not make an arrest made with probable cause unlawful." *Hansen v. Garcia, Fletcher, Lund & McVean*, 148 Ariz. 205, 207, 713 P.2d 1263, 1265 (App. 1986); *see also Jackson v. Jackson County*, 956 F. Supp. 1294, 1298

[3]Henson argues that because she had not received the second letter the school sent banning her from games, she was "authorized to be on the property as stated in Whaley's letter" issued before the previous incident. But Henson had been previously warned that further disruptive behavior would "result in a directive that [she was] not to attend games." *See* Ariz. R. Civ. App. P. 13(a)(6), 17B A.R.S.

(S.D. Miss. 1995); *Cullison v. City of Peoria*, 120 Ariz. 165, 168, 584 P.2d 1156, 1159 (1978) ("[W]hen the police make an arrest based upon probable cause, it is not material that the person arrested may turn out to be innocent . . . .").

¶14 Likewise, we reject Henson's claim that the trial court erred because it "misinterpret[ed the] facts" on which her complaint was based and "based its decision in dismissing [her] Civil Rights Violation" claim on the assumption that "this is a suit from the denial of access to attend scholastic activities." As discussed above, the trial court's analysis of Henson's right to attend scholastic activities was necessary to the resolution of her claims. And, to the extent Henson complains the trial court failed to expressly address her argument based on an alleged lack of probable cause for arrest, we note that it entered judgment in favor of TPD "[p]ursuant to [its] motion for summary judgment," which addressed her probable cause claims. In any event, "[w]e will affirm if the trial court's disposition is correct for any reason." *Logerquist v. Danforth*, 188 Ariz. 16, 18, 932 P.2d 281, 283 (App. 1996). In sum, we find no error in the trial court's grant of summary judgment.

¶15 In a rather confusing argument, Henson lastly maintains the trial court "abuse[d its] discretion by denying [her] motion to continue to prepare to obtain legal counsel to reply to [the City defendants'] Summary Judgment" motions. As Henson herself points out, citing *Illinois Bankers Life Ass'n v. Theodore*, 47 Ariz. 314, 317, 55 P.2d 806, 808 (1936), "motions for continuance are within the discretion of the trial court." And Henson has not presented anything to show that the trial court here did not exercise its

discretion "in a reasonable manner." *Id.* In fact, the court granted Henson an extension of more than two weeks in which to file her response. Therefore, we find no abuse of discretion in its denial of the motion.

DISPOSITION

¶16 The judgment of the trial court is affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge